

**California Department of Water Resources
Oroville Division, State Water Facilities
FERC Project No. 2100**

Proposed Process Protocols

I. Introduction and Purpose

This document states the Process Protocols for the relicensing of the Oroville Division, State Water Facilities (Federal Energy Regulatory Commission Project No. 2100) (Oroville Facilities¹ or Project). It is intended to provide a framework for communication, cooperation, consultation, and eventual settlement among the California Department of Water Resources (DWR), the Federal Energy Regulatory Commission (FERC or Commission)², government and public agencies, federally recognized Indian Tribes, and other interested parties and organizations (collectively “Participants³”) in connection with the relicensing of the Oroville Facilities. The Project is currently operated by DWR subject to the terms and conditions of a license issued by FERC in 1957.

A. Description of the Oroville Facilities

The Oroville Facilities are located on the Feather River in Butte County, California, and include the Oroville Dam and Reservoir, the Edward Hyatt Hydroelectric Powerplant, Thermalito Powerplant, Thermalito Diversion Dam Powerplant, Thermalito Forebay and Afterbay, and associated recreational and fish and wildlife preservation and enhancement facilities. The Oroville Reservoir (also known as Lake Oroville) is the principal water storage facility of the State Water Project (SWP) which conserves and delivers water to over two-thirds of California’s population and almost 1,000,000 acres of farmland.

The hydroelectric facilities at the Oroville Facilities have a combined licensed capacity of approximately 762 MW. The license project boundaries of the Oroville Facilities are depicted in the Initial Information Package prepared to facilitate relicensing.

¹ Historically, FERC has referred to the Oroville Facilities as the Feather River Project.

² The Federal Energy Regulatory Commission will participate in the relicensing process, but will not be a party to any settlement agreement.

³ Some Participants have special roles during relicensing. Select resource agencies and Indian Tribes have statutory roles and responsibilities under Federal law. DWR has responsibility for preparing and filing the license application.

Additional information about the Oroville Facilities is included in the Initial Information Package (IIP), which was distributed to all requesting parties in January and February 2001. The IIP was filed with the FERC on March 26, 2001.

B. Nature of the Relicensing Process

The existing license from FERC to operate the Oroville Facilities expires on January 31, 2007. DWR must file a notice of intent to seek a new license by January 31, 2002 and its application for a new license by January 31, 2005. On January 11, 2001 DWR received FERC approval to use the Alternative Licensing Procedures (ALP) for obtaining a new license.

FERC specified these procedures in its Order No. 596 (18 C.F.R. §4.34(i)). The Alternative Licensing Procedures were adopted by FERC to:

- “(i) Combine into a single process the pre-filing consultation process, the environmental review process under the National Environmental Policy Act and administrative processes associated with the Clean Water Act and other statutes;
- (ii) Facilitate greater participation by and improve communication among the potential applicant, resource agencies, Indian tribes, the public and Commission staff in a flexible pre-filing consultation process tailored to the circumstances of each case;
- (iii) Allow for the preparation of a preliminary draft environmental assessment by an applicant or its contractor or consultant or a preliminary draft environmental impact statement by a contractor or consultant chosen by the Commission and funded by the applicant;
- (iv) Promote cooperative efforts by the potential applicant and interested entities and encourage them to share information about resource impacts and mitigation and enhancement proposals and to narrow any areas of disagreement and reach agreement or settlement of the issues raised by the hydropower proposal; and
- (v) Facilitate an orderly and expeditious review of an agreement or offer of settlement of an application for a hydropower license, exemption or amendment to a license.” (18 C.F.R. §4.34(i)(2))

In accordance with the Alternative Licensing Procedures, DWR will prepare an application and a Preliminary Draft Environmental Assessment (PDEA) in coordination with relicensing Participants. Consultation with Indian Tribes, regulatory agencies, and land management agencies leading up to the filing of the application for a new license, and environmental review of the project, will be

consistent with the ALP. The PDEA will replace Exhibit E (Environmental Report) which FERC requires in a "traditional" license application process. FERC will then use the PDEA to finalize its own National Environmental Policy Act (NEPA) review process after the application is filed.

C. Role of the FERC in Relicensing

The Federal Power Act (FPA) provides the FERC with exclusive authority to license non-federal water power projects on navigable waterways and federal lands. The FERC issues licenses for up to 50 years for constructing, operating, and maintaining non-federal hydropower projects. Upon expiration of a license, the federal government can take over the project (with equitable compensation), or the FERC can issue a new license to either the existing licensee or a new licensee.

The FERC is headed by a five-person Commission whose members are appointed by the President and confirmed by the Senate. The Commission is supported by a staff that includes the Office of Energy Projects (OEP). It is the OEP staff that reviews and processes license applications and makes recommendations to the Commission on hydropower licensing matters.

Several important principles are established by the FPA that apply to relicensing.

- In deciding whether to issue a license, the FERC gives equal consideration to a full range of purposes related to the potential value of a stream or river including (1) hydroelectric development, (2) energy conservation, (3) fish and wildlife resources, including their spawning grounds and habitat, (4) recreational opportunities, (5) other aspects of environmental quality, (6) irrigation, (7) flood control, and (8) water supply.
- The FERC must be satisfied that the project to be licensed is adapted as well as possible to a comprehensive plan for developing the waterway. In making this judgment, the FERC considers comprehensive plans prepared by federal and state entities and the recommendations of federal and state resource agencies, the public, and Indian tribes affected by the proposed project.
- To adequately protect, mitigate for damage to, and enhance fish and wildlife, along with their habitats, each license includes a set of terms and conditions. These fish and wildlife conditions, along with conditions relating to other environmental resources and engineering issues, are determined through the FERC's independent analysis on the basis of federal and state fish and wildlife agency recommendations and input from the applicant, affected Indian tribes, and the public.
- In cases where the proposed project is located on a federal reservation, the federal agency responsible for managing that land can establish mandatory terms and conditions to protect the reservation. Additionally, the Department of Commerce is authorized by the FPA to prescribe fishways at projects licensed.

- After a license is issued, the FERC monitors the licensee's compliance with the terms and conditions throughout the term of the license. In addition, several other laws and executive orders affect the relicensing process. Seven federal laws are particularly prominent in their influence in the relicensing process. They are: (1) the National Environmental Policy Act (NEPA), (2) the Electric Consumers Protection Act (ECPA), (3) the Fish and Wildlife Coordination Act, (4) the National Historic Preservation Act, (5) the Endangered Species Act, (6) the Clean Water Act, and (7) the Wild and Scenic Rivers Act.

D. Participation in the Relicensing Process

1. Public Participation

The relicensing process for the Oroville Facilities, including the scoping and review of the PDEA, is open to the public and broad participation is encouraged. In October 1999, DWR sent out an informal mailer to known and potentially interested government agencies, Indian Tribes, and other interested parties and organizations to initiate a mailing list of those interested in the relicensing process. DWR will continue to update this list as other interested individuals and organizations become known or identify themselves. The list along with public notices issued by DWR and FERC will be used to furnish notice of availability of information for public review and to provide notice of public meetings. Any party that wishes to be added to the list should contact:

Sue Larsen
Department of Water Resources
Room 1640
P.O. Box 942836
Sacramento CA 94236-0001
Telephone: (916) 653-1096
Fax: (916) 653-9295
E-mail: slarsen@water.ca.gov

2. FERC Staff Participation

FERC staff may, without prior notice, participate in formal public meetings, and Work Group and other meetings in this process prior to DWR's submittal of its license application which will be no later than January 31, 2005.

E. Purpose of Settlement Agreement

The Participants in the Alternative Licensing Procedures intend to reach a written settlement agreement that:

- (1) will facilitate development of a new license application and will serve as a basis for the new license and regulatory approval(s) necessary for the FERC's issuance of that new license,
- (2) will state the mutually acceptable resolution of the Participants' disputes that arose in connection with the original license for the Oroville Facilities, and
- (3) may include on a case-by-case basis, mutually acceptable resolution of the Participants' disputes that are related to the future operations of the Oroville Facilities but that are or may be considered outside of the FERC's jurisdiction. The primary purpose of the settlement agreement is (1).

F. Duration of Process Protocols

These Process Protocols will become effective upon approval by the Plenary Group. Once approved they will replace the Communications Protocol which became effective upon FERC's approval of DWR's request to use the Alternative Licensing Procedures.⁴ The Process Protocol will remain in effect until FERC notifies DWR that the draft environmental assessment and final license application have been accepted for filing with FERC as set forth in 18 C.F.R. §4.32(d). The Process Protocol may be extended by agreement of the Participants.

G. Revision of Process Protocols

This Process Protocol may be revised as appropriate by agreement among the Participants.

H. Reservation of Rights

This Process Protocol does not modify the rights or duties of any Participant, except that all Participants will make the good faith efforts as provided herein to reach the settlement agreement described in Section I.E.

II. Proposed Structure and Purpose

A. Introduction

DWR, state and federal agencies, Indian Tribes, local government officials and interested members of the public will actively participate in the relicensing process as the Collaborative Team. Through facilitated discussions, brainstorming, and presentation of individual Participants' interests, the Collaborative Team will develop collective goals and objectives that 'everyone

⁴ On January 18, 2001, the Plenary Group approved the draft Process Protocols/Communications Protocol proposed by DWR as an interim operations document until the Plenary Group could consider and approve revised Process Protocols recommended to it by a Plenary Group Task Force.

can live with'. These will then guide the Collaborative Team through the relicensing process to develop and negotiate settlement offers, and eventually to enter into the settlement agreement described in Section I.E.

Reaching a settlement agreement that will be a basis of the new license requires mutual understanding of interests. Such mutual understanding will require the cooperation of Participants so that meetings and other collaborative efforts are conducted in an efficient manner. Participants with similar interests are encouraged to form coalitions and choose appropriate spokespersons to represent their interests throughout the relicensing process.

B. Three-Tier Structure

The Collaborative Team will consist and function at three levels.

Plenary Group

Comprised of primary spokespersons for Participant groups

Keeper of the "Collaborative Dream"⁵

Provides global perspective (identifies potential conflicts and balances resource plans)

Shepherds collaborative/settlement process from beginning to end

Stays informed of Work Group progress

Reviews Work Group recommendations for potential conflicts with other Work Groups or timely pursues further evaluation

Meets Regularly

Work Groups

Address resource issues

Consider existing and new information

Keep Plenary Group informed

Develop recommended solutions: First Phase Studies, Second Stage Protection, Mitigation, & Enhancement measures (PM& Es)

Make recommendations to Plenary Group

Meet regularly (more frequently than Plenary Group)

Task Forces

Subsets of Work Groups, that may include members from more than one Work Group
Convene to perform studies to address specific issues that may involve more than one resource

Established and meet as needed

⁵ "Keeper of the Collaborative Dream" This phrase captures the essence of the Plenary Group's role as shepherd for the collaborative settlement process from beginning to end, and convenors of the forum where issues are debated, recommendations from the Work Groups and Task Forces are considered and balanced, potential conflicts are addressed, and actions are taken in a comprehensive collaborative manner. The "dream" aspect of the phrase speaks to the overarching desire on the part of each Plenary Group Participant to realize that all of the time and effort each Participant will exert in achieving consensus and developing a durable settlement agreement will result in something better than would have occurred absent the Participants' collaborative involvement in the Plenary Group.

Make recommendations to Work Groups and/or Plenary Group

C. Purpose and Mission of Groups

Plenary Group. The Plenary Group will be made up of Participants representing all interests. It is the keeper of the “collaborative dream” – it is responsible for shepherding the collaborative process from the beginning to end. Since the FERC regulatory process requires DWR to submit a license application no later than January 31, 2005, it is incumbent on the Plenary Group to maintain a schedule consistent with that requirement. To do this, the Plenary Group will establish group goals and objectives, develop an approach to achieve those goals and objectives, and maintain a close linkage to the Work Groups to make sure that FERC/DWR deadlines are satisfied.

The Plenary Group will maintain a global perspective and work to resolve issues that may arise within and between Work Groups. The Plenary Group will review the progress of all Work Groups to consider how their proposals/recommendations respecting studies and PM&Es interrelate and how they may interact (positively or negatively) with other issues. The Plenary Group will identify conflicting proposals while there is still time to reconcile differences and adjust the proposals and provide all Participants the opportunity to discuss the development of overall mix of studies, alternatives, and, eventually, PM&E proposals.

The Plenary Group will rely heavily on input from Work Groups when performing its responsibilities, in particular with respect to Work Group recommendations. Responsibility for the Collaborative Team’s approval of study plans and PM&E proposals rests with the Plenary Group.

Work Group Recommendations. Having reached consensus on a recommendation, the work group will select one or more Participant(s) as responsible to: 1) request the recommendation be placed on the next Plenary agenda, 2) make arrangements for appropriate copies for the Plenary Group, 3) be responsible for describing and responding to questions to obtain approval of the Plenary Group. The responsible participants will also need to bring back to the Work Group any further questions or tasks requested by the Plenary in the event they require further information before giving their approval.

Evaluation of Recommendation. If possible, the recommendation will be discussed at the next Plenary Group Meeting or, if that is not practicable (or necessary), the discussion will take place at a time agreed to by the Plenary Group, but prior to the recommendation being implemented. Members of the relevant Work Group will be invited to attend and participate at the Plenary Group meeting where the recommendation is discussed.

Time-Sensitive Recommendations. If the recommendation involves time-sensitive action items, when the written recommendation is sent to the Plenary Group it will clearly identify a deadline (no shorter than one week from the receipt of the recommendation)

for questions or objections by Plenary Group representatives. If a Plenary Group representative asks for a further evaluation of a time-sensitive recommendation, it will take place promptly by telephone conference call or a special meeting, as appropriate.

A Work Group representative will attend each Plenary Group meeting and brief the Plenary Group on the Work Group's progress and answer any clarifying questions regarding recommendations. The Work Group representative will be responsible for briefing their subgroup on what took place at the Plenary Group meeting.

The Plenary Group will meet regularly. It is anticipated that during the initial organizational period, the Plenary Group may need to meet monthly however, it is expected that once established, the meetings will become less frequent.

Work Groups. Work Groups will be established as necessary to deal with resource issues. It is anticipated that there will be at least six Work Groups: (1) Cultural Resources, (2) Recreation and Socioeconomics, (3) Land Use, Land Management and Aesthetics, (4) Aquatic Resources (including Water Quality), (5) Terrestrial Resources, and (6) Engineering and Operations. (The Aquatics and Terrestrial Resources Work Groups will be initiated as a single Environmental Work Group.) More Work Groups might be formed or, for specific issues or studies, members of individual Work Groups may be combined into a Task Force. The Work Groups will define resource goals and objectives, develop an approach to achieve those goals and objectives, identify issues, develop study plans, establish and maintain critical paths, and resolve issues. At the beginning of the process the Work Groups will focus on designing studies that will result in the gathering of credible scientific information relevant to the decisions that need to be made in the relicensing process; later the Work Groups will focus on developing mutually agreeable PM&Es.

The Work Groups will examine the information necessary to resolve specific resource issues and use available and new information from the relicensing studies to propose solutions to problems or develop PM&E proposals to address issues. The Work Groups will focus on a variety of potential solutions to study issues and viable PM&E measures, and will consider the expected effectiveness of these solutions.

Work Group meetings will be held as necessary, but they are likely to occur more frequently than Plenary Group meetings.

Task Forces. Task Forces will be convened at the request of Work Groups in coordination with the Plenary Group as appropriate to assist in performing studies requiring specialized expertise specific to individual issues or that require input on more than one resource area. For example, a Task Force may be organized to address an issue that relates to both aquatic resources and recreational interests. Task Forces will report results of activities directly to the Work Groups. It is anticipated that Task Forces will meet as needed to gather information and resolve questions specific to individual issues that may arise within Work Groups.

III. Communications Goals, Types, and Methods

A. Communication Goals

The Process Protocols have the following communication goals:

- to encourage broad public and agency participation in the relicensing process;
- to provide ample notice of meetings open to attendance by the general public;
- to provide documentation of meetings and contacts with specific groups and individuals at which action is taken or decisions are made affecting relicensing;
- to provide a mechanism for establishing the formal consultation record required for the ALP;
- to provide a mechanism for public access to studies, meeting summaries and other components of the Public Reference File to be maintained by DWR.

B. Types

Both formal and informal communications will occur during the relicensing process. Formal communications will be through meetings of the relicensing participants and through formal correspondence. Informal communications are all communications other than those that occur in formal meetings or through formal correspondence.

C. Communication Methods

Consistent with State and federal paper reduction policies, and in accordance with the objectives of FERC Order No. 604, issued May 26, 1999, DWR intends, where possible, to transmit and receive written relicensing materials in electronic format, and to publish this material on its Oroville Facilities relicensing web site. The Oroville Facilities relicensing web site can be accessed at <http://OrovilleRelicensing.water.ca.gov>.

In most instances, the following procedures will be used:

<u>Document</u>	<u>Primary</u>	<u>By Request</u>
Meeting notices	Web site and E-mail	Hard-copy
Meeting summaries ⁶	Web site	Hard-copy
Meeting materials	E-mail	Hard-copy
Major documents	Web site and/or CD-ROM	Hard-copy
Correspondence From DWR	Web site and E-mail	Hard-copy

⁶ Includes scheduled teleconference meetings.

From others
Status reports

E-mail or disk
Web site with E-mail notice

Hard-copy
Hard-copy

Substantive correspondence relating to relicensing between DWR and other Participants and between FERC and DWR will be included in the Public Reference File and posted on the Oroville Facilities relicensing web site. Copies of correspondence between Participants and FERC shall become part of the Public Reference File described in Section III.F and will be posted on the Oroville Facilities relicensing web site. DWR requests that all correspondence be sent to DWR within 10 working days via E-mail or disk to facilitate such posting. Hard copies will be scanned by DWR and posted on the Oroville Facilities relicensing web site.

D. Meetings

1. Formal Public Meetings

DWR will convene the following formal public meetings during the relicensing process to obtain comments from the general public: (1) joint agency/public initial information/NEPA scoping meetings; and, (2) a meeting to receive comments on the PDEA.

FERC will publish advance notice of the scoping meetings and meetings to receive comments on the PDEA in the *Federal Register*.

DWR will publish notice of these meetings in appropriate local and other media. In addition DWR will post notice on its Oroville Facilities relicensing web site and provide notice of all such meetings to all Participants on the relicensing mailing list. At least 30 days advance notice of such meetings will be provided. Notice for those on the DWR mailing list will be by E-mail unless otherwise requested.

Unless otherwise specified, these meetings will be held in Butte County, California or in Sacramento, California. Summaries of these meetings will be prepared, distributed to Participants, posted on the Oroville Facilities relicensing web site, included in the Public Reference File, and included in DWR's six-month progress reports to be filed with FERC as set forth in Section III.G.

2. Plenary and Work Group Meetings

Plenary and Work Groups consisting of relicensing Participants will be convened for the duration of the Process Protocol⁷. The Plenary Group will meet periodically to review work progress, help resolve disputes referred to it by Work Groups, and provide a global perspective. The Work Groups will

⁷ All meetings are open to the public.

address specific resource issues such as water supply, fishery resources, recreation and cultural resources. Such meetings will be held primarily in Butte County, California, although some meetings may be held in Sacramento, California or elsewhere. Summaries of these meetings, including decisions and action items, will be posted on the Oroville Facilities relicensing web site, and included in the Public Reference File in accordance with Section C above.

DWR will attempt to schedule such meetings months in advance of the meeting dates, but not less than 30 days prior to a meeting, except under extraordinary circumstances. Agendas will be provided to Plenary and Work Group Participants at least 15 days prior to the meeting. Notice will be by electronic mail unless notice by mail is requested.

DWR will attempt to provide meeting materials at least seven days in advance of the scheduled meetings to all Participants who request the meeting materials. The intent is to provide meeting Participants with sufficient notice and information to facilitate meaningful participation. Specifically, Participants will have sufficient time for internal review of major policy matters before making decisions on such matters.

3. Meeting Summaries

DWR will be responsible for preparing draft meeting summaries to be circulated as indicated in Section II.B. Meeting summaries will include the major issues discussed and any decisions or action items. Every effort will be made to distribute meeting summaries within 30 days of the meetings and at least 7 days in advance of the following meeting of the specific Work Group or Plenary Group. Corrections may be submitted within 15 days after distribution of the meeting summaries. Meeting summaries and revisions will be posted on the Oroville Facilities relicensing web site and included in the Public Reference File. Copies of the summaries and any corrections will be placed in the Public Reference File and used in the six-month progress reports to be filed with FERC (see Sections III.F and III.G).

4. Informal Communications

It is anticipated that during the course of the relicensing process there will be informal communications (1) between DWR personnel and FERC staff, (2) between various other Participants and FERC staff, (3) between DWR and other Participants and (4) among Participants. Informal communications are all communications other than those that occur in formal meetings. Such informal communications, including caucuses during meetings, are permitted and encouraged, in order for the Participants to share their perspectives on issues and identify and discuss areas of agreement and disagreement on issues.

Prior to DWR filing its formal relicensing application, anticipated to take place between August 1, 2004 and January 31, 2005, DWR and Participants may engage in oral communications with FERC staff without prior notice to other parties.

If a person proposes to prepare and distribute to other Participants a summary of an informal communication with a FERC representative or another Participant, that person shall give the applicable FERC representative or Participant engaged in the informal communication an opportunity to review and approve the summary.

E. Written Communications

Substantive correspondence regarding relicensing of the Oroville Facilities between DWR and other Participants, DWR and FERC, or Participants and FERC shall become part of the Public Reference File and posted on the Oroville Facilities relicensing web site (e.g., letters from Participants regarding concerns relating to the ALP process, relicensing issues, study plans, study results, and proposed enhancements). Substantive correspondence between relicensing Participants may also be submitted for inclusion in the Public Reference File and on the Oroville Facilities relicensing web site as appropriate. Send copies to DWR at the address set forth in Section I.C. If possible, all correspondence should be sent in electronic format (E-mail or disk) so that it can be posted on the Oroville Facilities relicensing web site. Participants wishing to send correspondence to FERC should reference Docket Number P-2100 and send them to:

Mr. David P. Boergers, Secretary
Federal Energy Regulatory Commission
825 North Capitol Street, NE
Washington, DC 20426

Copies of all materials related to the relicensing of the Oroville Facilities prepared by, or received by, a State or federal agency will be made available to the public in a manner consistent with the respective agency's procedure governing public records.

F. Public Reference File

The Public Reference File relating to the relicensing of the Oroville Facilities will consist of copies of written correspondence, meeting summaries, study plans, study reports, and other related documents. DWR will maintain duplicate Public Reference Files at its Sacramento headquarters and at the Oroville Public Library. The addresses are:

1416 9th Street, Room 742

Sacramento, California 95814

1820 Mitchell Avenue
Oroville, California 95965

FERC will maintain a file of six-month progress reports and other pre-filing documents for viewing in its Public Reference Room in Washington, D.C.⁸. FERC will also make these documents available on its Records and Information Management System (RIMS) web site located at www.ferc.fed.us.

Materials will be available for review and copying by any member of the public at these three locations. Paper copies from DWR's Sacramento Public Reference File will be available for 10 cents per page and from the Oroville Public Library at the prevailing copy rate.

All other requests for documents from DWR should be directed to the Sacramento Public Reference File attendant and should state the document title and the date, and specify FERC Project No. 2100.

G. Six-Month Progress Report to FERC

Pursuant to 18 C.F.R. §4.34(i)(6)(ii), DWR will provide FERC with a progress report every six months for the duration of the Process Protocol. These progress reports will include the Public Reference File log and Plenary and Work Group meeting summaries. Copies of the reports will be available to Participants, and the general public at the Oroville Facilities relicensing web site or on CD-ROM, if requested.

IV. Roles, Decision Making and Resolution of Issues

The Oroville Facilities Relicensing Collaborative Process is a public process that is open to anyone who is interested in the relicensing of the Oroville Facilities subject to the following.

A. Roles of Involved Parties

Interested Parties. Interested Parties are those people or entities that have an interest in the outcome of the relicensing of the Oroville Facilities. To the extent desired by an individual Interested Party, the Interested Parties will remain informed about and provide input regarding relicensing activities.

Participants. Participants are a subset of the Interested Parties who have chosen to be actively involved in the relicensing process, both with respect to the development of credible scientific information relevant to the decisions that need to be made in the

⁸ Relicensing participants may access these documents through FERC's Records and Information Management System (RIMS) web site using Docket Number P-2100.

relicensing process and in the development of a settlement agreement. This will occur through participation at Plenary Group, Work Group, and Task Force meetings, working to collaboratively develop solutions, by providing written comments, or otherwise providing input.

Licensee. The Licensee is the State of California Department of Water Resources (DWR). DWR shall act as a full Participant in the collaborative process and will take the lead in developing necessary information and preparing formal documents. Working with the facilitator, DWR will propose agendas (for review, input, and changes by the other Participants) for all meetings. Agendas are created to reflect the interests of the process; agendas are accepted at the beginning of the meeting by the Participants present.

DWR is committed to supporting the collaborative process in seeking lasting agreements to major issues related to the relicensing of the Oroville Facilities that are acceptable to as many of the participants as possible. However, DWR is required to file an application to relicense the Oroville Facilities with the FERC no later than January 31, 2005. A dedicated effort by all Participants is required to produce a settlement agreement (as described in Section I.E) by the required filing date.

Consulting Team. The Consulting Team includes scientific and recreational consultants, engineers, regulatory specialists, and public involvement and meeting facilitation consultants retained by DWR. The Consulting Team provides specialized expertise in the foregoing areas. Members of the Consulting Team will not have the authority to bind DWR or any other Participant.

The Consulting Team has an obligation to support the collaborative process. The consulting team will assist in carrying out the study plans developed by the Work Groups and the Plenary Group⁹. The Consulting Team will also develop draft documents for Work Group and Plenary Group consideration, scoping documents, draft study plans, reports and application proposals.

Facilitator. The facilitator has a primary role of promoting the success of the collaborative process. The facilitator will help the Participants identify goals, identify issues, develop and maintain critical paths, accomplish creative problem solving, and reach resolution of issues. The facilitator will manage the Plenary or Work Group meetings in order to meet the overall objectives of the collaborative process. The facilitator's role is to help the Participants reach a written settlement agreement, supported by DWR and the other Participants, as described in Section I.E. The facilitator will adopt a proactive leadership style as the champion for the Oroville Facilities Relicensing process; the facilitator works for "the process" and no particular agency or interest group. For large meetings, such as the Plenary, two Facilitators may

⁹ No individual can drive the process by merely requesting studies and expecting them to be performed. Study requests should include a basis for the study and be relevant to the relicensing process.

be used, the back-up facilitator mainly for identifying order of requests to address those present.

Statutory Authorities. Certain Participants to the collaborative process have statutory authority defined in federal and state law. While agencies with statutory authority may enter into a settlement agreement after determining that settlement is consistent with their legal mandate, such a decision is based upon adequate information in the record, and a determination by the agency that it can meet its statutory objectives through such settlement. Statutory authority cannot be constrained or obviated by consensus or agreement. A non-exclusive list of Participants and their statutory authorities include:

- Departments of the Interior and Commerce: Statutory authority for the Departments of Interior and Commerce is contained in the Federal Power Act (Sections 18, 10(j) and 10(a)), the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Environmental Policy Act, the National Historic Preservation Act and other federal acts. The US Fish and Wildlife Service will represent the Department of the Interior in the process with regard to Interior's exercise of its responsibilities for fishways, fish and wildlife resources, and related matters. Similarly, the National Marine Fisheries Service will represent the Department of Commerce with regard to fishways, fishery resources, and related matters.
- Federal Energy Regulatory Commission (FERC): Statutory authority for the FERC is contained in the Federal Power Act and NEPA.
- United States Forest Service (USFS): Statutory authority for USFS is contained in the Federal Land Policy Management Act (FLPMA), Forest Management Act, and FPA.
- United States Bureau of Land Management (BLM): Statutory authority for the BLM is contained in the FLPMA and FPA.
- State of California Water Resources Control Board (SWRCB): Statutory authority for SWRCB is contained in Section 401 of the Clean Water Act and the California Water Code.
- State of California Department of Fish and Game (DFG): Statutory authority for DFG is contained in the FPA, the Fish and Wildlife Coordination Act and the California Fish and Game Code.
- State of California Department of Parks and Recreation (DPR): State Historic Preservation Office (SHPO): Statutory authority for SHPO contained in Section 106 of the National Historic Preservation Act.
- Indian Tribes: Statutory authority for Indian Tribes is contained within the Federal Power Act and Section 106 of the National Historic Preservation Act.

B. Composition of Plenary Group and Work Groups

Each Participant will identify a primary representative(s) for the Plenary Group and for each Work Group that they want to participate in. Rosters will be maintained for each Work Group. DWR will actively seek participation from other groups to ensure broad and balanced representation in both the Plenary Group and the Work Groups.

C. Responsibilities of Participants

Attendance. Participants will make every effort to attend meetings and inform the facilitator in advance of any absence at a meeting or any change in representation. If possible, each representative will identify a back-up person, prepared to represent their organization when needed. Participants will abide by the ground rules presented in Attachment 1.

Agendas. Participants will assist the facilitator and DWR in developing meeting agendas and adhering to them. Participants, including individuals or groups of individuals, who desire to have an item added to a meeting agenda, shall follow the protocol established in Section IV.E.

Preparation. Participants will come prepared for meetings having reviewed all previously distributed material relating to an agenda item. After the initial “getting up to speed” of all of the Participants, if a Participant is new to the group, it is their responsibility to be briefed by their organization or to ask for a separate briefing by DWR or facilitator outside of the group meetings.

If a Participant would like the Work Group to consider a specific proposal, it is the responsibility of that Participant to prepare and provide whatever written material would be useful to the Work Group.

Participation. Each Participant is expected to be a willing contributor at meetings, to communicate actively and succinctly (listen, don’t interrupt, communicate early, no side conversations, be clear and concise, suggest solutions), to share all necessary factual information, and to strive for consensus on a timely basis. Each Participant is expected to be open minded, to listen to others, to respect others’ points of view, to be direct and considerate, show respect for the other Participants, and be willing to explain their concerns to others.

Implementing Process Protocols. Each Participant is responsible for implementing these process protocols so as to contribute to the success of the collaborative process. Such implementation includes making efficient use of meeting time, mutual respect in discussion, a willingness to speak up if another Participant appears to be acting inconsistently with these protocols, and a corresponding willingness to be corrected in like manner. Any level of the Collaborative Team may elect to assign the function of timekeeping or process observer to one or more Participants in a given meeting, if appropriate to assure effective implementation of these Process Protocols.

Authority. Each Participant will have authority to represent its organization. The Participant will keep its organization briefed on an on-going basis about the activities of the group, the issues being addressed, and possible solutions to those issues. The Participant will incorporate the input they have received from their internal discussions into their participation at the group level. When the Work Group identifies a viable solution and tries to determine whether there is consensus on a proposed recommendation, the Participant will state whether (1) they can live with the solution, (2) they think their organization can live with the solution, and (3) they need further approval from their organization before such consensus is reached. If the Participant has stated they can live with the solution, the Participant will favorably present the solution as a viable approach for their organization when discussing it within their organization.

Assignments. Ideally, all members of a Work Group will volunteer to work on outside-of-the-meeting assignments (following up on specific discussions, preparing proposals, laying groundwork for future discussion). In some instances, it may be appropriate for DWR to provide draft materials for purposes of the Work Group's consideration. Participants should complete assignments on schedule.

D. Decision Making

Brainstorming. Participants will be encouraged to “brainstorm” a variety of solutions to specific issues. When a Participant identifies possible solutions as part of this process it is on behalf of the Work Group, not their individual organizations, and a Participant will not be held to any brainstorming ideas until such time as they have indicated a willingness to live with a proposed solution.

Consensus. To the extent possible, the Participants will resolve issues through consensus – where Participants (including DWR) can live with the decision being made¹⁰. In this relicensing, the Protocols adopt the FERC's definition in its ALP rulemaking wherein consensus is defined as the (weight of) overriding opinion. A Participant may be asked to “live with” something that is not their preferred ideal, if most Participants believe it is a fair decision, considering the many competing interests. The term “consensus-based approach” refers to a voluntary process in which the Participants seek a mutually acceptable resolution of their differences with the overarching goal of developing a durable settlement agreement on all resource issues associated with the Oroville Facilities Relicensing.

A facilitator will work with the Plenary Group and all Work Groups throughout the process and may communicate separately with disputing parties for the purpose of reducing tension and achieving agreement on a process for resolving issues. In the event that minority dissenting opinions are unable to be accommodated

¹⁰ See FERC Order 596 for its definition on consensus in its ALP rulemaking. (Order 596 can be found on FERC's web site at www.ferc.fed.us under the topic Hydro.)

within a proposed decision, the minority dissenting opinions will be recorded in an appropriate manner, including the meeting summaries.

Dispute Resolution. On an as-needed basis, the facilitator will use a variety of dispute resolution techniques (including mediation) to work through difficult issues. Participants will use an escalation process whereby they first strive to resolve conflicts that arise within the group where the conflict originates. If the parties fail to reach resolution at the initial level, by mutual agreement the parties can elevate the dispute to the next level. For example, a conflict originating within a Work Group that is not resolved at the Work Group level may be elevated to the Plenary Group for resolution. If the Plenary Group is unable to achieve resolution, DWR will seek resolution with the appropriate regulatory agency(ies), excluding FERC, and report back to the Plenary Group. As a last resort, if DWR or other Participants in concert with the appropriate regulatory agency(ies) cannot resolve the issue, then the Plenary Group may file a request with FERC to resolve the disagreement according to the [dispute resolution] provisions of 18 CFR 4.34(i)(6)(vii).

E. Process Issues

Requests to Present Items to a Group or Task Force. During the course of the relicensing process individuals or groups of individuals may wish to come before one of the three above entities to present a proposal for action. The preferred manner to make such a request would be during the “Action Items, Next Meeting and Next Steps” section of the agenda for the desired meeting venue. A description of the request and its relevance to the relicensing and/or use of existing project facilities or lands should be made available at this time. The group or task force can then discuss the request, ask questions, and decide when and where to entertain the proposal for action. The group or task force should provide direction as to time to be allotted for the presentation and consider materials to be presented and/or distributed during the selected meeting. The item would then occur on the agenda issued by DWR as provided in Section III.D.2 above, and include a time limit for oral presentation. Provisions for presentation “visual aids” (large photos, maps, renderings, etc.) and distribution of supporting written material to Participants at the meeting will be determined in advance.

In the event that those who wish to present a proposal for action believe that there are extraordinary circumstances or the opportunity is “time-sensitive” and must be addressed at the earliest possible date, those supporting the proposal should contact the facilitator to discuss the appropriateness of the proposal and the urgency of presentation to a group or task force. The facilitator, in consultation with other affected participants of the desired meeting, would consider the request and determine when and how to entertain the proposal presentation.

Identifying Collaborative Process Breakdown. Process breakdown is not deadlock on a single issue or resource area, but breakdown of the whole collaborative process. Breakdown would be if the weight of opinion of the Participants is that the process has

become a waste of their valuable time and resources and that the public interest might be better served under the circumstances by the Commission's directing a completion of the pre-filing process and what further steps are required of DWR. At such time, DWR and the Participants will review and consider the entire process and attempt to re-establish and maximize balanced participation to get the collaborative process back on track.

Tracking Issue and Resolutions. DWR will track the progress of work groups by maintaining an annotated list of issues that identifies specific issues, status of the issues, and resolutions. While a Participant will not be precluded from reopening a resolved issue, the Participants will make every effort to move forward once decisions have been made and to only request that the group revisit decisions in limited situations. No Participant or represented organization is bound by any preliminary agreements on individual issues, although all Participants recognize that such preliminary agreements are the necessary basis for reaching the written settlement agreement described in Section I.E. However, the Participants may enter into binding agreement(s) providing for implementation of specific PM&E measures in advance of the settlement agreement described in Section I.E or FERC's issuance of a new license.

Information. Participants will have access to all documents developed during relicensing activities. DWR and all Participants will distribute necessary information on a timely, equal and open basis. Information developed in this process will be public as required by the Public Records Act (California Gov. Code §6250 et seq.) or other applicable sunshine law.

Some information may be confidential under California or other applicable law. An example is information on Native American graves, cemeteries, and sacred places. It is the responsibility of a Participant providing information that is confidential under applicable law to identify the information and inform the group. Participants may be requested to sign a confidentiality agreement prior to receiving the confidential information. All Participants will abide by such a confidentiality agreement and applicable law pertaining to confidential information.

To the extent that non-confidential data or information is draft, preliminary or otherwise qualified, and if Participants use such data/information outside of the context of the Oroville Facilities relicensing, they will appropriately qualify the data/information.

This process will involve negotiations of disputed issues, in an effort to reach a written settlement agreement. Settlement offers and negotiating positions may be made in confidence, and Participants will not disclose offers made in confidence outside of their respective organizations, or use them as evidence, admission, or argument in any adjudicatory proceeding. When the Participants are ready to undertake negotiations, they will first consider and decide how best to assure the confidentiality of settlement offers and negotiating positions and will amend this Process Protocol as appropriate.

Media Relations. Since Plenary and Work Group meetings are open to the public, media representatives can be expected to attend and will have access to all non-confidential documents developed during the relicensing process. In addition, DWR intends to prepare quarterly newsletters to update interested members of the public and the media on the process. Participants understand that 'debating the process in the media' can undermine the collaborative process. Participants will determine appropriate stages at which to formally update the media on the progress of relicensing process and will fashion such updates as a group. Participants agree to represent the collaborative process to the media in a balanced manner and to notify the Plenary Group of any individual Participant's media contact.

ATTACHMENT 1

GROUND RULES FOR PARTICIPANTS

- Actively participate – commit to success of the process
- Respect others
- Be brief and prepared
- One person speak at a time
- Oroville Facilities relicensing focus
- Listen to each other
- Leave 'baggage' at the door
- Communicate interests, not positions
- Help involve all
- Seek solutions for all – solving challenges rather than winning battles
- No 'gunny sacking' – raise concerns early

GROUND RULES FOR FACILITATOR

- Help group accomplish objectives
- Help guide discussion
- Enforce participant groundrules
- Help involve all
- Ask 'why' to clarify
- Manage time
- Track actions, next steps, deadlines